

House File 610 - Enrolled

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1 1 HOUSE FILE 610
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1 3 AN ACT
1 4 RELATING TO THE TRANSMISSION OF ELECTRONIC MAIL INCLUDING
1 5 THE TRANSMISSION OF UNSOLICITED BULK ELECTRONIC MAIL, AND
1 6 THE SALE OR OFFER FOR DIRECT SALE OF PRESCRIPTION DRUGS
1 7 AND THE SALE OF ADULTERATED OR MISBRANDED DRUGS THROUGH THE
1 8 USE OF ELECTRONIC MAIL OR THE INTERNET, AND PROVIDING FOR
1 9 PENALTIES.
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1 11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
1 12
1 13 Section 1. NEW SECTION. 716A.1 DEFINITIONS.
1 14 As used in this chapter, unless the context otherwise
1 15 requires:
1 16 1. "Computer" means the same as defined in section 702.1A.
1 17 2. "Computer data" means the same as defined in section
1 18 702.1A.
1 19 3. "Computer network" means the same as defined in section
1 20 702.1A.
1 21 4. "Computer operation" means arithmetic, logical,
1 22 monitoring, storage, or retrieval functions, or any
1 23 combination thereof, and includes, but is not limited to,
1 24 communication with, storage of data to, or retrieval of data
1 25 from any device or human hand manipulation of electronic or
1 26 magnetic impulses. "Computer operation" for a particular
1 27 computer may also mean any function for which the computer was
1 28 generally designed.
1 29 5. "Computer program" means an ordered set of data
1 30 representing coded instructions or statements that, when
1 31 executed by a computer, causes the computer to perform one or
1 32 more computer operations.
1 33 6. "Computer services" means computer time or services,
1 34 including data processing services, internet services,
1 35 electronic mail services, electronic message services, or
2 1 information or data stored in connection therewith.
2 2 7. "Computer software" means a set of computer programs,
2 3 procedures, and associated documentation concerned with
2 4 computer data or with computer operation, a computer program,
2 5 or a computer network.
2 6 8. "Electronic mail service provider" means a person who
2 7 does either of the following:
2 8 a. Is an intermediary in sending or receiving electronic
2 9 mail.
2 10 b. Provides to end users of electronic mail services the
2 11 ability to send or receive electronic mail.
2 12 9. "Encryption" means the enciphering of intelligible data
2 13 into unintelligible form or the deciphering of unintelligible
2 14 data into intelligible form.
2 15 10. "Owner" means an owner or lessee of a computer or a
2 16 computer network or an owner, lessee, or licensee of computer
2 17 data, a computer program, or computer software.
2 18 11. "Person" means the same as defined in section 4.1.
2 19 12. "Property" means all of the following:
2 20 a. Real property.
2 21 b. Computers, computer equipment, computer networks, and
2 22 computer services.
2 23 c. Financial instruments, computer data, computer
2 24 programs, computer software, and all other personal property
2 25 regardless of whether they are any of the following:
2 26 (1) Tangible or intangible.
2 27 (2) In a format readable by humans or by a computer.
2 28 (3) In transit between computers or within a computer
2 29 network or between any devices which comprise a computer.
2 30 (4) Located on any paper or in any device on which it is
2 31 stored by a computer or by a person.
2 32 13. "Uses" means, when referring to a computer or computer
2 33 network, causing or attempting to cause any of the following:
2 34 a. A computer or computer network to perform or to stop
2 35 performing computer operations.
3 1 b. The withholding or denial of the use of a computer,
3 2 computer network, computer program, computer data, or computer
3 3 software to another user.
3 4 c. A person to put false information into a computer.
3 5 Sec. 2. NEW SECTION. 716A.2 TRANSMISSION OF UNSOLICITED

3 6 BULK ELECTRONIC MAIL == CRIMINAL PENALTIES.
3 7 1. A person who does any of the following is guilty of an
3 8 aggravated misdemeanor:
3 9 a. Uses a computer or computer network with the intent to
3 10 falsify or forge electronic mail transmission information or
3 11 other routing information in any manner in connection with the
3 12 transmission of unsolicited bulk electronic mail through or
3 13 into the computer network of an electronic mail service
3 14 provider or its subscribers.
3 15 b. Knowingly sells, gives, or otherwise distributes or
3 16 possesses with the intent to sell, give, or otherwise
3 17 distribute computer software that does any of the following:
3 18 (1) Is primarily designed or produced for the purpose of
3 19 facilitating or enabling the falsification of electronic mail
3 20 transmission information or other routing information.
3 21 (2) Has only limited commercially significant purpose or
3 22 use other than to facilitate or enable the falsification of
3 23 electronic mail transmission information or other routing
3 24 information.
3 25 (3) Is marketed by that person acting alone or with
3 26 another for use in facilitating or enabling the falsification
3 27 of electronic mail transmission information or other routing
3 28 information.
3 29 2. A person is guilty of a class "D" felony for committing
3 30 a violation of subsection 1 when either of the following
3 31 apply:
3 32 a. The volume of unsolicited bulk electronic mail
3 33 transmitted exceeds ten thousand attempted recipients in any
3 34 twenty-four-hour period, one hundred thousand attempted
3 35 recipients in any thirty-day time period, or one million
4 1 attempted recipients in any twelve-month time period.
4 2 b. The revenue generated from a specific unsolicited bulk
4 3 electronic mail transmission exceeds one thousand dollars or
4 4 the total revenue generated from all unsolicited bulk
4 5 electronic mail transmitted to any electronic mail service
4 6 provider by the person exceeds fifty thousand dollars.
4 7 3. A person is guilty of a class "D" felony if the person
4 8 knowingly hires, employs, uses, or permits a person less than
4 9 eighteen years of age to assist in the transmission of
4 10 unsolicited bulk electronic mail in violation of subsection 2.
4 11 4. Transmission of electronic mail from an organization to
4 12 a member of the organization shall not be a violation of this
4 13 section.
4 14 Sec. 3. NEW SECTION. 716A.3 SALE OR OFFER FOR DIRECT
4 15 SALE OF PRESCRIPTION DRUGS == CRIMINAL PENALTIES.
4 16 1. The retail sale or offer of direct retail sale of a
4 17 prescription drug, as defined in section 155A.3, through the
4 18 use of electronic mail or the internet by a person other than
4 19 a licensed pharmacist, physician, dentist, optometrist,
4 20 podiatric physician, or veterinarian, is prohibited. A person
4 21 who violates this subsection is guilty of a simple
4 22 misdemeanor.
4 23 2. A person who knowingly sells an adulterated or
4 24 misbranded drug through the use of electronic mail or the
4 25 internet is guilty of a class "D" felony. However, if the
4 26 death of a person occurs as the result of consuming a drug, as
4 27 defined in section 155A.3, sold in violation of this section,
4 28 the violation is a class "B" felony.
4 29 Sec. 4. NEW SECTION. 716A.4 USE OF ENCRYPTION ==
4 30 CRIMINAL PENALTY.
4 31 A person who willfully uses encryption to further a
4 32 violation of this chapter is guilty of an offense which is
4 33 separate and distinct from the predicate criminal activity and
4 34 punishable as an aggravated misdemeanor.
4 35 Sec. 5. NEW SECTION. 716A.5 VENUE FOR CRIMINAL
5 1 VIOLATIONS.
5 2 For the purpose of venue, a violation of this chapter shall
5 3 be considered to have been committed in any county in which
5 4 any of the following apply:
5 5 1. An act was performed in furtherance of any course of
5 6 conduct which violated this chapter.
5 7 2. The owner has a place of business in the state.
5 8 3. An offender has control or possession of any proceeds
5 9 of the violation, or of any books, records, documents,
5 10 property, financial instrument, computer software, computer
5 11 program, computer data, or other material or objects used in
5 12 furtherance of the violation.
5 13 4. Access to a computer or computer network was made by
5 14 wires, electromagnetic waves, microwaves, or any other means
5 15 of communication.
5 16 5. The offender resides.

5 17 6. A computer which is an object or an instrument of the
5 18 violation is located at the time of the alleged offense.
5 19 Sec. 6. NEW SECTION. 716A.6 CIVIL RELIEF == DAMAGES.
5 20 1. A person who is injured by a violation of this chapter
5 21 may bring a civil action seeking relief from a person whose
5 22 conduct violated this chapter and recover any damages incurred
5 23 including loss of profits, attorney fees, and court costs.
5 24 2. A person who is injured by the transmission of
5 25 unsolicited bulk electronic mail in violation of this chapter,
5 26 may elect, in lieu of actual damages, to recover either of the
5 27 following:
5 28 a. The lesser of ten dollars for each unsolicited bulk
5 29 electronic mail message transmitted in violation of this
5 30 chapter, or twenty-five thousand dollars per day the messages
5 31 are transmitted by the violator.
5 32 b. One dollar for each intended recipient of an
5 33 unsolicited bulk electronic mail message where the intended
5 34 recipient is an end user of the electronic mail service
5 35 provider, or twenty-five thousand dollars for each day an
6 1 attempt is made to transmit an unsolicited bulk electronic
6 2 mail message to an end user of the electronic mail service
6 3 provider.
6 4 3. a. A violation of this chapter is a violation of
6 5 section 714.16, subsection 2, paragraph "a". All the powers
6 6 conferred upon the attorney general to accomplish the
6 7 objectives and carry out the duties prescribed pursuant to
6 8 section 714.16 are also conferred upon the attorney general to
6 9 enforce this chapter, including, but not limited to, the power
6 10 to issue subpoenas, adopt rules which shall have the force of
6 11 law, and seek injunctive relief and civil penalties.
6 12 b. In seeking reimbursement pursuant to section 714.16,
6 13 subsection 7, from a person who has committed a violation of
6 14 this chapter, the attorney general may seek an order from the
6 15 court that the person pay to the attorney general on behalf of
6 16 consumers the amounts for which the person would be liable
6 17 under subsection 1 or 2, for each consumer who has a cause of
6 18 action pursuant to this section. Section 714.16, as it
6 19 relates to consumer reimbursement, shall apply to consumer
6 20 reimbursement pursuant to this section.
6 21 4. At the request of any party to an action brought
6 22 pursuant to this section, the court may, in its discretion,
6 23 conduct all legal proceedings in such a way as to protect the
6 24 secrecy and security of the computer, computer network,
6 25 computer data, computer program, and computer software
6 26 involved in order to prevent possible recurrence of the same
6 27 or a similar act by another person, and to protect any trade
6 28 secrets of any party and in such a way as to protect the
6 29 privacy of nonparties who complain about violations pursuant
6 30 to this section.
6 31 5. This section shall not be construed to limit a person's
6 32 right to pursue any additional civil remedy otherwise allowed
6 33 by law.
6 34 6. An action brought pursuant to this section shall be
6 35 commenced before the earlier of five years after the last act
7 1 in the course of conduct constituting a violation of this
7 2 chapter or two years after the injured person discovers or
7 3 reasonably should have discovered the last act in the course
7 4 of conduct constituting a violation of this chapter.
7 5 7. Personal jurisdiction may be exercised over any person
7 6 who engages in any conduct in this state governed by this
7 7 chapter.
7 8 8. The injured person shall not have a cause of action
7 9 against the electronic mail service provider that merely
7 10 transmits the unsolicited bulk electronic mail over its
7 11 computer network.
7 12 Sec. 7. NEW SECTION. 716A.7 FORFEITURES FOR VIOLATIONS
7 13 OF THIS CHAPTER.
7 14 All property, including all income or proceeds earned but
7 15 not yet received from a third party as a result of a violation
7 16 of this chapter, used in connection with a violation of this
7 17 chapter, known by the owner thereof to have been used in
7 18 violation of this chapter, shall be subject to seizure and
7 19 forfeiture pursuant to chapter 809A.
7 20 Sec. 8. Chapter 714E, Code 2005, is repealed.
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CHRISTOPHER C. RANTS
Speaker of the House

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JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and
is known as House File 610, Eighty-first General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved _____, 2005

THOMAS J. VILSACK
Governor